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Federal Communications Commission
Washington, D.C. 20554**

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**Federal Communications Commission
Office of the Secretary**

In the Matter of)	MB Docket No. 04-191
)	
San Francisco Unified School District)	
)	
For Renewal of License for Station KALW(FM),)	Facility ID No. 58830
San Francisco, California)	File No. BRED-19970801YA
To: The Secretary		
Attn: Chief Administrative Law Judge		
Richard L. Sippel		

**ENFORCEMENT BUREAU'S
REPLY TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT**

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Summary

As explained in the Enforcement Bureau's *Proposed Findings of Fact and Conclusions of Law* filed October 14, 2005, the record developed at hearing establishes by a preponderance of evidence that the San Francisco School District ("SFUSD"); renewal applicant for noncommercial education Station KALW(FM), San Francisco, California, falsely certified its renewal application filed August 1, 1997. Subsequently, SFUSD and the managers of Station KALW(FM) continued to deceive the Commission in opposing a Petition to Deny and in responding to a staff letter of inquiry. Finally, in September 2004, station managers lacked candor and misrepresented facts during discovery.

Contrary to SFUSD's *Proposed Findings of Facts and Conclusions of Law*, the evidence does not support a finding that SFUSD's certification that Station KALW(FM) had maintained its public inspection file ("PIF") in accordance with the Commission's rules was, at most, an innocent mistake on the part of its then-General Manager, Jeffrey Ramirez. Rather, the evidence established that before Mr. Ramirez filed the renewal application, he knew that the PIF had not been maintained as the Commission's rules required. Consequently, SFUSD's certification that it had placed required documents in the station's PIF at appropriate times during the license term was knowingly false. Mr. Ramirez's subsequent failure to acknowledge the false certification in providing a declaration to support SFUSD's Opposition to a Petition to Deny was also deceptive.

Similarly, Mr. Helgeson, Station KALW(FM)'s Operations Manager, knew that the station had failed to maintain its PIF in accordance with Commission rules. Thus, statements in his January 1998 and April 2001 declarations which claimed or suggested

that the station's PIF had been complete in August 1997 were also knowingly false.

During discovery in this proceeding, Mr. Helgeson did virtually nothing to correct the lies that appeared in his declarations. Similarly, although Ms. Sawaya, Station KALW(FM)'s General Manager since March 1, 2001, learned within days of her arrival that KALW's PIF lacked documents that should have been present in August 1997, she participated in SFUSD's continuing efforts to cover-up its lies when she oversaw and ratified the false April 2001 LOI response. When given an opportunity to explain fully what had happened in connection with SFUSD's response to the staff's letter of inquiry during her September 2004 deposition, Ms. Sawaya chose to continue SFUSD's cover up.

Based on SFUSD's pattern of dishonesty, the only reasonable remedy is denial of SFUSD's renewal application.

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I. PRELIMINARY STATEMENT

1. On October 14, 2005, the Enforcement Bureau (the "Bureau" or "EB") and the San Francisco Unified School District ("SFUSD") each filed proposed findings of fact and conclusions of law ("PFCs"). Pursuant to *Order*, FCC 05M-48 (rel. Oct. 11, 2005), the Bureau hereby replies to SFUSD's PFCs. The Bureau's decision not to reply to any particular finding or conclusion offered by SFUSD should not be construed as a concession to its accuracy or completeness. The Bureau continues to believe that its PFCs accurately and fairly present the relevant record evidence and properly apply Commission and court precedent. Nothing in SFUSD's PFCs alters our strongly held view that SFUSD's license renewal application should be denied.

II. REPLY FINDINGS/CONCLUSIONS

A. Overview

2. In its PFCs, SFUSD argues that Jeffrey Ramirez, former General Manager of Station KALW(FM), made a good faith mistake when he certified in the captioned renewal application that SFUSD had complied with the Commission's public file requirements.¹ SFUSD then contends that, after Mr. Ramirez was made aware of his mistaken certification, he acknowledged that mistake to the Commission in SFUSD's January 20, 1998, Opposition to a Petition to Deny ("Opposition") filed by Golden Gate Public Radio ("GGPR").² Moreover, according to SFUSD, William Helgeson, the station's Operations Manager, did not intend to suggest in his January 1998 Declaration in support of the Opposition that he was responsible for maintaining the station's public inspection file ("PIF") or that the PIF had been maintained in accordance with the Commission's rules. Rather, according to SFUSD, his January 1998 Declaration was intended only to "identify the source of GGPR's exhibits, nothing more."³

3. With respect to SFUSD's April 2001 response ("Final LOI Response") to the Commission staff's February 2001 Letter of Inquiry ("LOI"), SFUSD claims that it candidly acknowledged therein that a supplemental ownership report which should have been prepared in 1995 was dated December 10, 1997 and that the PIF did not contain "specifically-prepared issues/programs lists" for each quarter of the relevant license

¹ SFUSD PFCs, pp. 106, ¶¶ 363-65.

² *Id.* See SFUSD Ex. 4.

³ SFUSD PFCs, p. 116, ¶ 385. Mr. Helgeson's Declaration appears at SFUSD Ex. 4, pp. 74-75.

period.⁴ Moreover, SFUSD contends that its Final LOI Response made clear that SFUSD and the station's management believed that the PIF had contained required materials sufficient to support Mr. Ramirez's certification because of the existence of that certification, not because anyone then at the station with personal knowledge confirmed the accuracy of his representation to the Commission that the PIF was complete as of August 1, 1997.⁵

4. Finally, SFUSD contends that Mr. Helgeson and Margaret Ann (Nicole) Sawaya, Station KALW(FM)'s current General Manager, did not dissemble during their respective depositions. With respect to Mr. Helgeson, SFUSD argues that his inability to recall his role in various matters during his sworn deposition can be attributed in large part to his current legal blindness.⁶ With respect to Ms. Sawaya, SFUSD submits that her only significant failure as a deponent was her inability to recall a "single, specific, three-and-a-half year old document, without being asked about it or provided a copy."⁷

5. Contrary to the arguments advanced by SFUSD, the Bureau's PFCs

⁴ *Id.*, p. 118, ¶ 392. The Final LOI Response appears as EB Ex. 34.

⁵ SFUSD PFCs, pp. 118-19, ¶¶ 393-95

⁶ *Id.*, pp. 126-27, ¶ 420. Mr. Helgeson's deposition appears as SFUSD Ex. 15.

⁷ SFUSD PFCs, pp. 125-26, ¶¶ 417-18. Ms. Sawaya's deposition appears as SFUSD Ex. 18. SFUSD's defense is part of a pattern that runs throughout this case. The document in question – Ms. Sawaya's March 8, 2001 report to SFUSD's counsel – undermines SFUSD's position regarding the truthfulness of its certification about the completeness of the PIF, its Opposition's claims about the completeness of the PIF, and its Final LOI Response's claims about the completeness of the PIF, as does virtually all of the documentary evidence in this case. It should also be noted that SFUSD did not turn over Ms. Sawaya's report to the Bureau until some five months after Ms. Sawaya's deposition, notwithstanding its existence in her computer's hard drive. Even then, SFUSD's approach has been to minimize its significance – an approach it has taken with supporting declarations as well as other damaging documents.

*demonstrate that Mr. Ramirez's initial application certification regarding the PIF was baseless and that he knew it was baseless.*⁸ Further, notwithstanding the apparent concession made by Mr. Ramirez in his January 1998 Declaration that he may have misunderstood certain renewal application questions (emphasis added), the thrust of that Declaration, as well as the companion Declaration of Mr. Helgeson, was that review and updating of the PIF had been an ongoing process that began as soon as it was brought to Mr. Ramirez's attention that the PIF needed attention.⁹ Consequently, based on these sworn declarations, SFUSD, in its Opposition, deceptively argued that "[t]he truth regarding GGPR's charges [regarding the condition of the PIF and the renewal application certification that it had been properly maintained] ... is quite other than GGPR would have the Commission believe."¹⁰

6. Contrary to SFUSD's current spin on what it intended to say in 1998, neither the Opposition nor the Ramirez Declaration candidly acknowledged that the renewal application's certification regarding the PIF was a mistake. Rather, the only reasonable interpretation of SFUSD's Opposition was that the licensee had maintained the PIF as required; however, if the Commission found otherwise, no sanction should be imposed because Mr. Ramirez may have misunderstood what was required relative to the issues/programs lists.

7. In its Final LOI Response, again rather than candidly acknowledge the PIF's deficiencies, SFUSD deceptively asserted that, with the exception of one supplemental

⁸ Bureau PFCs, pp. 8-17, ¶¶ 16-28, pp. 61-66, ¶¶ 91-96.

⁹ *Id.*, pp. 23-29, ¶¶ 40-48, pp. 67-71, ¶¶ 98-102.

¹⁰ SFUSD Ex. 4, p. 36 (mistakenly referred to in the Bureau's PFCs at p. 23, n. 107 as SFUSD Ex. 4, p. 31).

ownership report, an earlier version of which SFUSD suggested had probably been placed in the PIF in a timely manner, the PIF contained required ownership reports and issues/programs lists.¹¹ The truth, which was known to Station KALW(FM)'s management and SFUSD's attorneys several weeks in advance of the submission of this filing with the Commission, was that the PIF had not contained required supplemental ownership reports and quarterly issues/programs lists on August 1, 1997, and did not contain such materials until well after the filing of the captioned renewal application.¹²

8. Moreover, during discovery in this proceeding, station General Manager Sawaya deceptively made it appear that she had no role whatsoever in the preparation of the Final LOI Response.¹³ The truth of the matter was that she had prepared a draft response based upon her own review of the PIF, and that, consequently, she knew full well that the Final LOI Response did not accurately respond to the LOI's questions.

9. Finally, even during the hearing, SFUSD did not exhibit candor on this critical point. Although SFUSD finally amended its renewal application certification regarding the PIF (SFUSD Ex. 76, filed June 2, 2005, and received as an exhibit in this proceeding on June 6, the first day of testimony), station management continued to dissemble about SFUSD's earlier submissions. In addition, SFUSD failed to offer testimony from key witnesses, such as Ernest T. Sanchez and Susan M. Jenkins of the Sanchez Law Firm, both of whom were uniquely in a position to explain the genesis of various false claims that appeared in the captioned renewal application, the Opposition and accompanying

¹¹ Bureau PFCs, pp. 44-50, ¶¶ 71-79, pp. 72-75, ¶¶ 103-07.

¹² *Id.*, pp. 34-37, ¶¶ 56-62, p. 72, ¶ 103.

¹³ *Id.*, pp. 52-59, ¶¶ 82-88, pp. 77-80, ¶¶ 110-15.

*declarations, and the Final LOI Response and Mr. Helgeson's accompanying Declaration.*¹⁴

10. Viewed collectively, SFUSD's misrepresentations and lack of candor cannot reasonably be viewed as a series of innocent mistakes. Rather, the evidence overwhelmingly reveals a calculated effort over a period of years on the part of SFUSD and the management of Station KALW(FM) to deceive the Commission with respect to the licensee's failure to maintain Station KALW(FM)'s PIF in accordance with the Commission's rules. Given these circumstances, denial of the captioned renewal application is the only appropriate resolution of this matter.

B. False Certification Regarding the PIF¹⁵

11. In seeking to deflect attention from Mr. Ramirez and his false certification, SFUSD's PFCs, at pages 7-11 (¶¶ 25-27, 29-37), appear to contend that significant personal hostility arose between GGPR members and Mr. Ramirez over his reliance on audience research reports to inform programming decisions, resulting in or contributing to the deficiencies in Station KALW(FM)'s PIF. In this regard, *inter alia*, SFUSD asserts at page 9 (¶ 33) of its PFCs that "[a]lthough several members of GGPR did not personally lose air time as a result of Mr. Ramirez's programming changes, they believed

¹⁴ *Id.*, pp. 75-77, ¶¶ 108-09.

¹⁵ The Bureau has never contended, nor does the evidence support a conclusion, that SFUSD's renewal application incorrectly or falsely certified the response to Section III, Question 1(b), which concerns the station's Ownership Report. In accordance with the instructions to the renewal application (*see* EB Ex. 58, p. 4), SFUSD correctly answered "Yes" to the question based on the submission of the current Ownership Report with the renewal application. Moreover, that question had nothing to do with whether previously due Ownership Reports or Supplemental Ownership Reports had been placed in the public inspection file in a timely manner. Placement of documents in the PIF was covered by Section III, Question 2, which SFUSD answered falsely.

that Mr. Ramirez should not base his programming changes on research reports.”

12. SFUSD’s contentions are an irrelevant smokescreen.¹⁶ As explained in the Bureau’s PFCs at pages 17-18, GGPR’s genesis and its subsequent frustration with SFUSD were linked to SFUSD’s failure to implement a recommendation developed by a Task Force that SFUSD had formed in the summer of 1995.¹⁷ That recommendation called for the formation of a nonprofit section 501(c)(3) agency created by the Board of Education (“BOE”) to govern the day-to-day affairs of the station.¹⁸ GGPR designed its governance proposal to fulfill the Task Force’s recommendation.¹⁹ SFUSD ignored GGPR, while SFUSD’s counsel consistently (and incorrectly) claimed that GGPR’s proposal would result in a transfer of control from SFUSD to GGPR to justify SFUSD’s inaction.²⁰

13. In its PFCs, at pages 15-19 (¶¶ 56-71), SFUSD submits that Susen Hecht, a station volunteer at the time, did not do what Mr. Ramirez expected her to do with the

¹⁶ Mr. Ramirez admitted under cross-examination that none of GGPR’s members lost air time as a result of his programming changes. Tr. 348-49. Moreover, the record evidence in this proceeding makes clear that Mr. Ramirez’s program changes were no more dramatic than those made by prior station general managers. See Tr. 342-44, referring to SFUSD Ex. 3, pp. 12-13, 36-37, 60-61, 84-85, 108-09. Compare these changes with programming changes referenced in EB Ex. 44, pp. 194 (Fall 1994), *id.*, p. 234 (July, August, September 1995) and *id.* p. 247 (October, November, December 1995). The fact of the matter is that programming changes occurred throughout the license term.

¹⁷ See also, EB Ex. 4, pp. 2-3, ¶¶ 7-8; SFUSD Ex. 22, pp. 14-31.

¹⁸ SFUSD Ex. 22, p. 24.

¹⁹ Bureau PFCs, p. 18, n. 85.

²⁰ *Id.*, p. 19, ¶ 33. Compare SFUSD Ex. 22, p. 40 (what GGPR actually proposed) with *id.*, p. 6 (an example of the Sanchez Law Firm’s characterization of the proposal). See also, SFUSD PFCs, pp. 10-11, ¶ 36. Ironically, Mr. Ramirez cited SFUSD’s failure to implement the Task Force recommendation regarding governance as one of the reasons why he opted to leave Station KALW(FM). See Tr. 334-39.

PIF. According to SFUSD, Ms. Hecht was to organize the PIF to make it easier for Mr. Ramirez to review it for completeness. However, SFUSD acknowledges that Mr. Ramirez gave no specific directions to Ms. Hecht as to how the PIF should be organized, and it contends that Ms. Hecht had no background in communications law or Commission compliance matters. From the foregoing, SFUSD argues that Mr. Ramirez was somehow justified in ignoring Ms. Hecht's critical report to him about the PIF's contents. SFUSD also appears to suggest that the impact of Ms. Hecht's report is somehow diminished because the Bureau did not produce her as a witness at the hearing.

14. The Bureau's PFCs, at pages 10-11 (¶¶ 18-21), accurately describe Ms. Hecht's role regarding the PIF. As discussed therein, Ms. Hecht was a station volunteer. In June 1997, Mr. Ramirez asked her to review the PIF. She did so, created a report of what she saw, and gave that report to him sometime later that month. Among other things, Ms. Hecht's report revealed that the most recent supplemental ownership report in the PIF was dated in 1991 and that, as far as she could determine, the last full set of issues/programs lists in the PIF had been prepared in the spring of 1992, which happened to coincide with the departure of Daniel del Solar and the advent of Jerry Jacob as the station's General Manager.²¹ Ms. Hecht's report to Mr. Ramirez appeared as Exhibit E of GGPR's Petition to Deny.

15. The Bureau's PFCs, at page 10 (¶ 18), also note that Mr. Ramirez's story as to what he had instructed Ms. Hecht to do in this project evolved from reviewing the PIF (his January 1998 Declaration), to putting the PIF's contents in order so that he could review it more efficiently (his written testimony in this proceeding). Most importantly,

²¹ Compare EB Ex. 44, pp. 79-80 with *id.*, pp. 87-89.

the Bureau's PFCs, at pages 11-12, 16 (¶¶ 21, 27), observe that, approximately a month before he certified that the PIF had been maintained as required by the Commission's rules, Mr. Ramirez had received from Ms. Hecht a report that clearly showed otherwise.

16. As there is no dispute as to the genuineness of the Hecht report,²² SFUSD's only hope of challenging its impact is to suggest that it was somehow inaccurate or that Mr. Ramirez never read it. SFUSD claims through Mr. Ramirez that Ms. Hecht's report was "inaccurate,"²³ was not what he asked her to do,²⁴ was "inaccurate and confused,"²⁵ "did not look like professional and reliable work"²⁶ and that he never read it closely or gave it much consideration.²⁷ Suffice it to say that it is impossible to determine whether a document is accurate or inaccurate unless one has read it, and, in this particular case, compared it to what was actually in the PIF.

17. Inasmuch as SFUSD has ultimately conceded with its renewal application amendment that changed the certification about the PIF from "Yes" (*i.e.*, that it was complete and maintained in accordance with the rules) to "No"²⁸ (*i.e.*, that the PIF was missing supplemental ownership reports and issues/programs lists), it appears more likely

²² SFUSD has never claimed, much less demonstrated, that the Hecht report attached to the GGPR Petition to Deny as its Exhibit E was not the document that Ms. Hecht gave to Mr. Ramirez. *See* SFUSD Ex. 4, p. 50, ¶ 10. Thus, the Bureau's inability to produce Ms. Hecht as a witness is inconsequential. *See also*, Bureau's PFCs, p. 10, n. 40.

²³ *Id.*

²⁴ SFUSD Ex. T-1, pp. 12-13 (set forth in the Bureau's PFCs, p. 12, ¶ 21).

²⁵ SFUSD Ex. 4, p. 50, ¶ 12.

²⁶ SFUSD Ex. T-1, pp. 12-13.

²⁷ *Id.*

²⁸ *See* SFUSD PFCs, p. 101, ¶ 345 (SFUSD Ex. 76).

than not that Ms. Hecht's report, in fact, provided an accurate representation of what was in the PIF at the time she reviewed it. SFUSD, as the party that had the relevant records from the time of their creation, is in the best position to explain, if possible, exactly what was inaccurate about Ms. Hecht's report and how and when Mr. Ramirez realized that it was inaccurate. SFUSD's silence on those points speaks volumes.

18. Having failed to diminish the significance of the Hecht report, SFUSD's next tack is to make it appear that Mr. Ramirez diligently reviewed the renewal application's instructions, ascertained the PIF's contents on his own, read the applicable Commission rules, consulted with counsel, read a pertinent memorandum from the National Association of Broadcasters ("NAB"), and yet, after having done all of the above, still managed to mistakenly certify that the PIF had been maintained in accordance with the Commission's rules.²⁹ As discussed further below, the Bureau does not doubt that Mr. Ramirez did some of the above. However, Mr. Ramirez's claim to have mistakenly certified that SFUSD had maintained its PIF in accordance with the rules defies credulity.

19. The Bureau's PFCs, at pages 12-16 (¶¶ 22-27), accurately relate the steps that Mr. Ramirez took to ascertain what the Commission's rules required with respect to a broadcast station's public inspection file and what he did once he determined that the PIF did not contain required issues/programs lists. Those steps, as well as Ms. Hecht's report, revealed to Mr. Ramirez that the PIF was missing most of the required issues/programs lists. The only last second, corrective action that Mr. Ramirez apparently took was to have Mr. Covell create a document about the *City Visions* program. However, Mr. Ramirez gave Mr. Covell no guidance whatsoever as to how that document should be

²⁹ See SFUSD PFCs, p. 20, ¶¶ 72-73.

formatted.³⁰ Consequently, in addition to being placed in the PIF well after the quarterly deadlines imposed by the rules, Mr. Covell's document clearly failed to meet the substantive requirements for an issues/programs list set forth in the Commission's rules. Accordingly, as set forth in the Bureau's PFCs, at pages 64-65 (¶ 94),³¹ the record evidence establishes that Mr. Ramirez's certification regarding the PIF was knowingly false.³²

20. As additional support for its conclusion that Mr. Ramirez's PIF certification was knowingly false, the Bureau's PFCs point out that both the applicable Commission rule (47 C.F.R. § 73.3527(a)(8)) and the NAB memo that Mr. Ramirez allegedly read make quite plain that issues/programs lists must be prepared and placed in the station's public inspection file on a quarterly basis during each year of the license term, specifically, by January 10 for the quarter ending December 31; April 10, for the quarter

³⁰ Bureau PFCs, pp. 15-16, ¶ 26. *See also*, EB Ex. 3.

³¹ The Bureau notes that there is a typographical error in a sentence appearing at p. 65, ¶ 94 of its PFCs. The sentence in question currently reads: "There is no evidence that Mr. Ramirez did not do so even though the former still worked at the station and the latter remained in the San Francisco area following his departure from Station KALW(FM)." The sentence should read: "There is no evidence that Mr. Ramirez did so even though the former still worked at the station and the latter remained in the San Francisco area following his departure from Station KALW(FM)."

³² The Bureau's PFCs at page 17, ¶ 28, also note that Mr. Ramirez, at his deposition, testified that he figured out only after he had left SFUSD's employ that the PIF certification was erroneous but that he never shared that realization with anyone. That, too, is fiction. Mr. Ramirez's deposition claim is decidedly at odds with the knowledge he obtained from his June/July 1997 research, his October 1997 acknowledgement of error to Mr. Sanchez, and SFUSD's oft-repeated contention that Mr. Ramirez candidly acknowledged his mistake regarding the certification about the PIF in his January 1998 Declaration.

*ending March 30; July 10, for the quarter ending June 30; and October 10, for the quarter ending September 30.*³³

21. Mr. Ramirez had to know that SFUSD had failed to fulfill this quarterly requirement for at least two reasons. First, Mr. Ramirez had not even looked at the station's PIF until June 1997, some ten months after he had started as Station KALW(FM)'s General Manager, and he had not delegated to anyone the task of maintaining the PIF or the task of placing issues/programs lists in the PIF. Second, Ms. Hecht's report revealed an absence of quarterly issues/programs lists. Under these circumstances, SFUSD's "Yes" response to the captioned renewal application's question concerning the licensee's maintenance of the station's PIF during the license term was a knowing deception, not the innocent mistake that SFUSD contends.

22. Moreover, SFUSD has no basis for arguing that Mr. Ramirez reasonably relied on advice given by Mr. Sanchez, at least with respect to the renewal application certification about the PIF.³⁴ During the May-July 1997 period, there is no record evidence that Mr. Sanchez had any knowledge about the PIF's shortcomings or provided any advice to Mr. Ramirez about how to correct the situation. In this regard, had Mr. Sanchez been apprised of the situation in June or July, he would have had no reason to ask in October 1997 for Mr. Ramirez's comments about the bases for a possible petition to deny with respect to the PIF. Thus, contrary to SFUSD's assertions in its PFCs, at pages 20, 25 and 106, 111-12 (§§ 73-74, 93, 363 and 374, respectively), there is no basis to conclude that Mr. Ramirez obtained any informed advice from Mr. Sanchez.

³³ See Bureau PFCs at pp. 12-14, §§ 22, 24, *citing* EB Ex. 59; EB Ex. 11A.

³⁴ *Id.*, p. 106, § 363.

23. As the Bureau notes in its PFCs, at pages 14-15 (¶ 25), only one conversation between Messrs. Ramirez and Sanchez specifically referenced license renewal questions – not the four suggested by SFUSD in its PFCs at page 112 (¶ 374). That sole conversation occurred on June 30, 1997 – at approximately the time that Ms. Hecht gave Mr. Ramirez her report about the contents of the PIF, and a full month before Mr. Sanchez reviewed the filled-out renewal application. According to the Sanchez Law Firm's billing records, the other conversations between Messrs. Ramirez and Sanchez that are cited by SFUSD as somehow significant either occurred before the renewal application and its instructions had even arrived at Station KALW(FM) or involved matters other than the renewal application. Consequently, it appears that Messrs. Ramirez and Sanchez discussed specific renewal application questions only once, and there is no credible evidence that their conversation covered how to answer the renewal application's question about the PIF. In this regard, as the Bureau also notes in its PFCs at pages 14-15 (¶ 25), Mr. Ramirez could not remember what he asked Mr. Sanchez about the renewal application, whether he told Mr. Sanchez what was in the PIF, what he planned to put in the PIF, or whether issues/programs lists had or had not previously been placed in the PIF.

24. Because Mr. Ramirez had already reviewed the PIF and/or had received Ms. Hecht's report by the time of the June 30 conversation, he knew and could have reported to Mr. Sanchez what was in the PIF and, in turn, received advice from Mr. Sanchez as to what to do about the situation. However, as the Bureau's PFCs cited above show, Mr. Ramirez had no memory about the matter and Mr. Sanchez did not testify. Thus,

SFUSD's arguments that Mr. Ramirez relied on Mr. Sanchez's advice and that that advice was crucial to the certification regarding the PIF are not credible.

25. In *Abacus Broadcasting Corp.*, 8 FCC Rcd 5110, 5113 (Rev. Bd. 1993), cited by SFUSD at page 110 (§ 371) of its PFCs to support its contention that Mr. Ramirez made the renewal application certification in good faith, the renewal applicant's principal was asked by his attorney to make a quick decision regarding a pleading that the attorney had to file the next day. Through miscommunication and haste, the pleading did not accurately describe the situation surrounding the availability to the applicant of a transmitter site. Consequently, the Review Board determined that the applicant did not intend to deceive the Commission.

26. In the instant case, Mr. Ramirez received Ms. Hecht's report and had his last apparent substantive communication with his attorney about the renewal application a full month before he responded to the PIF question. Thus, unlike the situation in *Abacus*, SFUSD had more than enough time to assess its situation and accurately report the contents of the PIF and when such materials were placed therein. Rather than tell the truth, acknowledge its PIF deficiencies, and take all necessary steps to bring the Station KALW(FM) PIF into compliance, SFUSD tried to avoid the consequences of its violation by certifying falsely in its renewal application that its PIF was and had been maintained as the rules required.

C. The Deception Continues – the Opposition.

27. Irrespective of whether the Sanchez Law Firm was knowingly involved in the false certification regarding the PIF, it became evident to Mr. Sanchez in early October 1997 that the above-captioned renewal application's response to Section III, Question 2

should have been "No." In this regard, as SFUSD's PFCs, at pages 27-29 (¶¶ 100-09), accurately recount, Mr. Ramirez informed Mr. Sanchez in writing on October 4, 1997, that GGPR's allegations regarding the PIF were accurate, *i.e.*, that supplemental Ownership Reports had not been placed in the PIF following the 1992 and 1994 BOE elections and that the only issues/programs list in the PIF dated later than September 1991 was a portion of the *City Visions* list prepared by Mr. Covell.³⁵ During October 1997, Messrs. Ramirez and Sanchez also talked about GGPR's charges on several occasions, and Mr. Ramirez even sent Mr. Sanchez an inventory of the PIF.³⁶

28. Unlike the claims that appeared in his January 1998 Declaration, Mr. Ramirez gave no indication to Mr. Sanchez in October 1997 that the renewal application certification concerning the PIF resulted from a misunderstanding of the rules or the renewal application form's instructions, or that it was attributable to legal advice that he had received from Mr. Sanchez.³⁷ Moreover, Mr. Ramirez clearly understood then that the renewal application certification concerning the PIF was wrong and required correction,³⁸ and that, to bring the PIF up-to-date, SFUSD needed to prepare and place additional Supplemental Ownership Reports, as well as additional quarterly issues/programs lists in the PIF. However, no correction of the certification occurred; the only corrective action relative to the PIF cited by SFUSD was the creation of the 1993

³⁵ SFUSD Ex. 6, pp. 1-2.

³⁶ See Bureau PFCs, pp. 20-22, ¶¶ 35-37. See also, SFUSD PFCs, p. 30, ¶¶ 113-14.

³⁷ Compare SFUSD Ex. 6, p. 1 with SFUSD Ex. 4, p. 50 and SFUSD Ex. T-1, p. 13, ll. 10-11.

³⁸ Accord, SFUSD PFCs, p. 29, ¶ 110.

and 1995 supplemental Ownership Reports in December 1997.³⁹ Even then those reports were only placed in the PIF; they were not sent to the Commission for filing.⁴⁰ From mid-September through November 1997, the billing records of the Sanchez Law Firm reflect numerous conversations between Mr. Sanchez and Enrique Palacios, Mr. Ramirez's superior, about GGPR and its allegations.⁴¹

29. In light of the foregoing, it is curious that SFUSD seems to posit that any problem with its Opposition and the supporting declarations of Messrs. Ramirez and Helgeson resulted from their reliance on the Sanchez Law Firm, as well as Mr. Helgeson's supposed ignorance about previous communications between Messrs. Ramirez and Sanchez, and assumptions that GGPR took documents from the PIF.⁴² Beyond the evidentiary problems arising from SFUSD's decision not to have Mr. Sanchez testify about his communications with SFUSD employees and its choice not to have Ms. Jenkins testify as to how various assertions came to appear in the noted

³⁹ See SFUSD PFCs, pp. 31, 112, ¶¶ 119, 375. In this regard, however, the Bureau notes that Mr. Covell created a second *City Visions* list, broken out quarterly, on or about October 24, 1997, just one week after Mr. Sanchez's receipt of the inventory of the PIF. See EB Ex. 3, p. 2, ¶ 7 and pp. 9-17; EB Ex. 7, p. 3. It would appear that Mr. Covell took this action at the behest of Mr. Ramirez and/or Mr. Helgeson, one or both of whom came to possess a "Sample Quarterly Issues/Programs List" at about that time. See EB Ex. 3, p. 25 (showing that such had been faxed from Station KALW(FM) on October 20, 1997).

⁴⁰ See Bureau PFCs, pp. 21-22, ¶ 36.

⁴¹ See EB Ex. 7, pp. 2-4.

⁴² See SFUSD PFCs, pp. 31-35, ¶¶ 119-20, 128-32.

declarations,⁴³ separate, more serious problems for SFUSD arise because the respective declarations, signed by Messrs. Ramirez and Helgeson under penalty of perjury, contain statements that are demonstrably false and/or misleading.

30. The Bureau's PFCs establish that Mr. Ramirez had no factual basis for supporting the Opposition's suggestion that the PIF was in compliance with the Commission's rules, or for claiming in his Declaration that he began to review and update the PIF following his August 1996 conversation with Dave Evans. The record shows Mr. Ramirez did not even look at the PIF until May 1997 – after he had received the renewal application packet from the Commission.⁴⁴ Likewise, Mr. Helgeson had no basis to claim in his Declaration that he was aware of, and had assisted with, an ongoing affirmative effort since Mr. Ramirez's arrival as General Manager to update and maintain the PIF in accordance with the Commission's rules. The record in this proceeding establishes that Mr. Helgeson knew that no such effort had occurred before May 1997, some 10 months after Mr. Ramirez had become the General Manager, and that Mr. Helgeson had no idea what the Commission's rules actually required with respect to the PIF.⁴⁵ Contrary to the representations in their declarations, both Messrs. Ramirez and Helgeson knew that virtually nothing had been done to keep the PIF up-to-date until July 1997.

⁴³ SFUSD's decision not to elicit testimony from Mr. Sanchez and Ms. Jenkins is all the more interesting in light of a document created by someone associated with SFUSD, most likely, Ms. Jenkins, who recognized that GGPR's PIF allegations had merit. *See* EB Ex. 8. *See also*, EB Ex. 9, pp. 4-5, ¶¶ 7-8, 13, 15-16 (referenced in EB Ex. 7, p. 7, slip listing ID 2607).

⁴⁴ *Compare* Bureau PFCs, pp. 8-9, ¶ 16 *with id.*, p. 24, ¶ 41.

⁴⁵ *See id.*, pp. 27-29, ¶¶ 46-48.

31. In any event, as soon as it became clear to SFUSD that its renewal application certification regarding the PIF was incorrect, it had a duty to amend its application to change that certification and explain the corrective action that it had taken and would take to bring the Station KALW(FM) PIF into compliance with the Commission's rules. It did not fulfill that duty. SFUSD took a decidedly different approach. Rather than candidly explain to the Commission that the PIF was incomplete at the time the renewal application was filed and describe what it had done since that filing to bring the PIF into compliance, SFUSD argued in its Opposition that GGPR's allegations regarding the PIF were factually incorrect, and it supported its contentions with declarations from the station's General Manager and Operations Manager that falsely represented that the PIF had been reviewed, updated and maintained during the tenure of the current General Manager, in accordance with the rules.⁴⁶

32. Moreover, contrary to the suggestion in SFUSD's PFCs, at pages 38 and 112 (¶¶ 143, 376), Mr. Ramirez and SFUSD did not candidly and forthrightly acknowledge a mistake in his January 1998 Declaration. At most, SFUSD proffered an imaginative excuse, which, if believed, would have exonerated SFUSD from the most potentially troubling of GGPR's allegations, namely, that SFUSD's certification regarding the PIF was knowingly false. In this regard, Mr. Ramirez's "confessions" that he may have made a mistake in completing Section III, Question 2 of the renewal application and that he had relied on the *City Visions* list to support his PIF certification ("I also believed that I had fully accounted for all public issues/programs during my tenure as General Manager in

⁴⁶ SFUSD Ex. 4, pp. 36, 49-51.

the document which Petitioner has labeled Exhibit O")⁴⁷ are not credible, because, among other things, they are inconsistent with the rest of his Declaration. In this regard, Mr. Ramirez's claims that he followed up on the conversation with Mr. Evans about the PIF, that review and updating of the PIF had been and was an ongoing process,⁴⁸ and that Ms. Hecht's PIF assignment was part of the review and updating process, all suggest, falsely, that the PIF had been maintained during Mr. Ramirez's tenure as the Commission's rules required. Moreover, as the Bureau's PFCs note at page 27 (¶ 45), Mr. Ramirez knew full well that *City Visions* was only one of several such programs that Station KALW(FM) had aired during his tenure. Finally, Mr. Ramirez's hearing testimony that his mistake came in missing the detail that the PIF had to be updated quarterly⁴⁹ might have been more convincing, had he so stated in his October response to Mr. Sanchez and/or in his January 1998 Declaration.

33. SFUSD's arguments concerning Mr. Helgeson's Declaration, which appear, *inter alia*, at its PFCs, at pp. 40-43 and 115-17 (¶¶ 149-59 and 384-89), are similarly not persuasive. Contrary to the contention in SFUSD PFCs, at pages 55 and 116 (¶¶ 208 and 385), Mr. Helgeson's Declaration plainly was intended to do more than convince the Commission that GGPR had obtained documents from Mr. Helgeson's private files. Just as plainly, that declaration was intended to establish that he, as the station's Operations Manager, actively participated in maintaining the PIF in accordance with the Commission's rules during the entirety of Mr. Ramirez's tenure as the station's General

⁴⁷ SFUSD Ex. 4, p. 50. *See also*, SFUSD PFCs, pp. 23-24, ¶ 86, p. 38, ¶ 143.

⁴⁸ In this regard, neither Mr. Ramirez's nor Mr. Helgeson's declarations contained any information about the documents added to the PIF in October and December 1997.

⁴⁹ *See* SFUSD PFCs, p. 113, ¶ 377.

Manager. As the record evidence in this proceeding overwhelmingly makes clear, Mr. Helgeson had absolutely no basis for making such a claim and he knew it.⁵⁰

34. Under the circumstances described above, SFUSD does not get a pass by suggesting that any Opposition misstatements that may have been less than candid, including those appearing in the Ramirez and Helgeson declarations, were the fault of the Sanchez Law Firm.⁵¹ No case supports the proposition that a declarant and its principal can reasonably rely on a factual claim put forth by their attorney when the declarant knows that claim to be false. Indeed, the opposite is the case.⁵² Thus, the cases cited by SFUSD in its PFCs at pages 131-32 (¶ 430) do not excuse misstatements from its managers Ramirez and Helgeson based on supposed reliance on the Sanchez Law Firm in connection with their declarations, because Messrs. Ramirez and Helgeson knew the statements to be false.

⁵⁰ See Bureau PFCs, pp. 27-29, ¶¶ 46-48.

⁵¹ See, e.g., SFUSD PFCs, p. 42, ¶ 156.

⁵² Cf. *RKO General, Inc. v. FCC*, 670 F.2d 215, 231 (D.C. Cir. 1981) ("Equally unpersuasive is RKO's objection that its decision not to inform the Commission of the SEC investigation was made on advice of counsel. RKO Brief at 38 & n.102. It is true that reliance on counsel may render a severe sanction such as disqualification too harsh in some circumstances. See *Asheboro Broadcasting Co.*, 20 F.C.C.2d 1, 3 (1969); cf. *WEBR, Inc. v. FCC*, 420 F.2d 158, 167-68 (D.C.Cir.1969). But "advice of counsel cannot excuse a clear breach of duty by a licensee." *Asheboro*, 20 F.C.C.2d at 3. The client becomes fully responsible at some point, and that point is reached more quickly in practice before the FCC than in courts of law. E.g., *Wadeco, Inc. v. FCC*, 628 F.2d at 128; *Lorain Community Broadcasting Co.*, 18 F.C.C.2d 686, 688 (1969), *aff'd sub nom. Allied Broadcasting, Inc. v. FCC*, 435 F.2d 68 (D.C.Cir.1970).

D. The Deception Continues – the Final LOI Response⁵³

35. The staff's Letter of Inquiry ("LOI") at page 2 clearly explained why it had been sent, *i.e.*, because SFUSD had not addressed GGPR's allegations about supplemental Ownership Reports, issues/programs lists, and donor lists.⁵⁴ The specific questions that followed sought to determine the state of the PIF on August 1, 1997, with respect to these three categories of documents, whether the PIF was complete as of the date of the LOI, and, if any deficiencies had existed, when SFUSD had brought the PIF into compliance with the rules.⁵⁵

36. In light of the information previously provided to the Sanchez Law Firm by Mr. Ramirez in October 1997,⁵⁶ Mr. Sanchez could have ascertained that Supplemental Ownership Reports for 1993 and 1995 had not been filed or placed in the PIF and that quarterly issues/programs lists had not been prepared or placed in the PIF during most of the license term. However, there is no record evidence that Mr. Sanchez or Ms. Jenkins did so or that Mr. Sanchez or Ms. Jenkins had any independent knowledge of what was or was not in the PIF. Instead, the evidence reflects that, initially at least, Mr. Helgeson was asked by the Sanchez Law Firm to review the PIF and report his findings to counsel. Mr. Helgeson did so, acknowledging that the PIF was a "mess," and that required

⁵³ SFUSD's PFCs at pp. 43-44, ¶¶ 160-63, refer to pleadings that are not officially in the hearing record. Although SFUSD does not request official notice of these pleadings, the Bureau would not object if the Presiding Administrative Law Judge took such notice.

⁵⁴ EB Ex. 13, p. 2.

⁵⁵ *Id.*, pp. 2-3.

⁵⁶ See SFUSD Ex. 6.